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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

ENE/146154

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Ozaukee County Department of Social Services in regard to Energy Assistance, a hearing was held on March 12, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for energy assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Christine Vitrano, Energy Services Worker
Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074 -0994

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.
2. Petitioner's daughter, MZ, is the Petitioner's paid caregiver. MZ receives \$3,300/month in Caretaker Supplement benefits for her caregiver services.

3. MZ lives with the Petitioner. MZ also owns a farm in Canada.
4. On November 12, 2012, the Petitioner applied for energy assistance for the 2013 heating year.
5. The Petitioner has monthly gross Social Security Income of \$1,402.90.
6. On December 12, 2012, the agency denied the Petitioner's application for energy assistance due to income over the program limit.
7. On December 22, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Energy Assistance is a state-run program established by federal law. See 42 USC § 8621, et seq. and Wis. Stat. § 16.385. Rules for the program must follow Wisconsin statutes, but where the statutes are silent the Department of Administration may set policies. Eligibility depends upon a household's income not exceeding 60% of the state average. Wisconsin Home Energy Assistance Program, Program and Operations Manual, pp. 1-3 and 2-12.

(The manual may be found online at <http://homeenergyplus.wi.gov/docview.asp?docid=22169>.)

Financial eligibility is based upon the household's gross income during the three months before the application date. Id., pp. 2-13 and 2-16. Applicants must verify the income of everyone in the household for those three months. Id., p. 3-19. No deductions from gross income are allowed for employment-related expenses, childcare, medical expenses or for any other reason. Id., p. 2-15.

Household members include a medical attendant who lives in the household. A medical attendant who does not live in the household and does not share in providing or being provided for the necessities of life (shelter, heat and utilities) is not counted as a household member. "Medical attendant" is defined as "a person who cares medically for the applicant to allow the applicant to remain in their home, instead of a nursing home or institution." Id, p. 2 – 11.

The Petitioner's representative and caregiver testified on her behalf at the hearing. She argues that her income should not be included in determining the Petitioner's household income for purposes of eligibility because she is an independent contractor paid by a conservatorship established for her mother to provide care for her mother. She asserts that it is to her mother's benefit to have her as a live-in attendant. If she did not act as a live-in caregiver, the conservatorship would pay another caregiver and that caregiver's income would not count in determining the Petitioner's eligibility for energy assistance.

I recognize the Petitioner's argument. However, neither the agency worker nor I have equitable authority to act contrary to the program regulations. The program regulations require the agency to consider a live-in medical attendant as a household member and to count the income of a household member in determining eligibility. There is no deduction for medical expenses paid by an applicant in determining eligibility.

For a household size of two, the program's income limit is \$7,939 for the 3 months prior to the application. In this case, the household had monthly income of \$4,702.90 (Petitioner's Social Security income of \$1,402.90 and MZ's income of \$3,300) for a 3 month income of \$14,108.70. Thus, the Petitioner's household income exceeds the program income limit for eligibility.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's application for energy assistance for the 2013 heating season.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

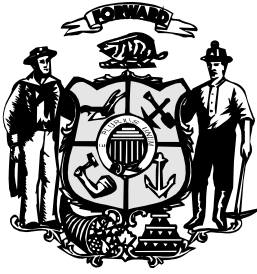
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Administration. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 101 East Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 15, 2013.

Ozaukee County Department of Social Services
DOA - Energy Assistance